

CV-S-00-0260



CV-S-00-0260-0001



03/01/2000



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7 **UNITED STATES DISTRICT COURT**
8
9 **DISTRICT OF NEVADA**

CV-S-00-0260-JBR-LRL

10 NATALIE DURANTE;
11 CLASS OF COMMUNITY COLLEGE
12 SOUTHERN NEVADA STUDENTS,

13 Plaintiffs,
14 v.)
15 STATE OF NEVADA; COMMUNITY)
16 COLLEGE OF SOUTHERN NEVADA;)
17 ARLIE J. STOPS,)
18 Defendants.)
19 _____)

COMPLAINT

20 COMES NOW, Plaintiff, NATALIE DURANTE, by and through her
21 attorney, ROBERT J. KOSSACK, ESQ., of KOSSACK LAW OFFICES, and
22 herein, upon information and belief, complains and alleges as
23 follows:

24 **Jurisdiction and Venue**

25 1. Plaintiff's federal claim arises pursuant to
26 5 USC § 552a; jurisdiction properly lies in this Court pursuant
27 to 28 USC § 1331 (Federal question); and Plaintiffs invoke this
28 Court's supplemental jurisdiction pursuant to 28 USC § 1337 to
hear Plaintiffs' pendent state tort claims; venue properly lies
in the unofficial Southern Division of the State of Nevada

1 pursuant to 42 USC § 1391(b)(2) in that a substantial part of the
2 events or omissions giving rise to Plaintiff's claims occurred in
3 Clark County, Nevada.

4 **Parties**

5 2. Lead Plaintiff, Natalie Durante ("Durante"), is and was
6 at all times relevant to this complaint, a citizen of the United
7 States and a resident of Clark County, Nevada.

8 3. Plaintiffs, Class of Southern Nevada Community College
9 Students (the "Class"), are all students who registered at
10 Community College of Southern Nevada ("CCSN") from January 1,
11 1998, to the present, who would not have provided their Social
12 Security account numbers on their applications or their tuition
13 checks had they been notified whether the disclosure was
14 mandatory or voluntary, or if they had been notified by what
15 statutory or other authority such number was solicited, or if
16 they had been notified what uses would be made of their Social
17 Security account numbers, or who removed their Social Security
18 account numbers from their CCSN school records, or who did not
19 provide their Social Security account numbers on their enrollment
20 applications or their tuition checks to CCSN.

21 4. Durante sues on behalf of herself and on behalf of the
22 Class and requests certification of the Class pursuant to FRCP 23
23 for the following reasons:

24 A. The members of the Class are so numerous that joinder
25 of all members is impracticable;

26 B. There are questions of law or fact common to the
27 members of the Class;

28

1 C. The claims or defenses of Durante are typical of the
2 claims or defenses of the members of the Class; and,

3 D. Durante will fairly and adequately protect the
4 interests of the members of the Class.

5 E. The relief sought for the class is injunctive only.

6 5. Defendant, State of Nevada ("State"), is and was at all
7 times relevant to this Complaint, a sovereign state of the United
8 States of America. CCSN is a department and agency of the State.

9 6. Defendant, Arlie J. Stops ("Stops"), is the Associate
10 Vice President for the CCSN Office of Admissions & Records. At
11 all times relevant to this Complaint, Stops was acting within the
12 scope and course of his employment with State and was acting
13 under color of law.

14 **Statement of facts**

15 7. Durante is registered as a student at CCSN.

16 8. When Durante enrolled to take classes at CCSN in the
17 Spring of 1998, she and all members of the Class, were asked to
18 disclose their Social Security account numbers on their
19 enrollment applications without being informed whether the
20 disclosure was mandatory or voluntary or by what statutory
21 authority their Social Security account numbers were solicited or
22 for what uses would be made of them. As a result, Durante and
23 all or most other members of the Class, provided their Social
24 Security account numbers on their CCSN enrollment applications.

25 9. Durante and all other members of the Class were also
26 requested to disclose their Social Security account numbers on
27 their tuition checks without being informed whether the
28 disclosure was mandatory or voluntary or by what statutory

1 authority their Social Security account numbers were solicited or
2 for what uses would be made of them. As a result, Durante and
3 all or most of the other members of the Class provided their
4 Social Security account numbers on their CCSN tuition checks.

5 10. Durante then learned the hazards of giving out her
6 Social Security account number and of the benefits of maintaining
7 her privacy, and on or about April, 1999, Durante was
8 inconvenienced at needing to remove her Social Security account
9 number from her CCSN school records. Other members of the Class
10 also concerned with their privacy who removed their Social
11 Security account number from their CCSN school records were
12 similarly inconvenienced.

13 11. Because of a CCSN records system administered by Stops,
14 Durante and all other members of the Class who removed their
15 Social Security numbers from their CCSN school records were
16 denied the following rights, benefits and/or privileges provided
17 by law and granted or provided other CCSN students:

18 A. Durante and such other members of the Class could no
19 longer use the CCSN telephone or WEB registration system to
20 enroll in classes at CCSN.

21 B. Durante and such other members of the Class could no
22 longer use the CCSN telephone or WEB registration system to drop
23 classes at CCSN.

24 C. Durante and such other members of the Class could no
25 longer use the CCSN telephone or WEB registration system to find
26 out their individual grades at CCSN.

27 12. As a result of the CCSN records system administered by
28 Stops, Durante has been inconvenienced on several occasions from

1 not being able to enroll in classes or find out her CCSN grades
2 over the telephone, and other members of the Class who also
3 removed their Social Security account numbers from their CCSN
4 records have also been similarly inconvenienced by not being able
5 to enroll in class, drop a class and/or find out their grades
6 over the telephone or computer Internet.

7 13. As a result of the manner in which Stops administered
8 and has been administering the CCSN Office of Admissions and
9 Records as described herein, Durante and other members of the
10 Class have been caused needless worry and inconvenience, and
11 Durante has been thereby caused damaged in an amount in excess of
12 \$1,000.00.

13 **First Cause of Action**
14 **(Permanent Injunctive Relief)**

15 14. 5 USC § 552a states in pertinent part:

16 Any...State...agency which requests an
17 individual to disclose his social security
18 account number shall inform that individual
19 whether that disclosure is mandatory or
20 voluntary, by what statutory or other
21 authority such number is solicited, and what
22 uses will be made of it.

23 15. 5 USC § 552a states in pertinent part:

24 It shall be unlawful for any...State...agency
25 to deny to any individual any right, benefit,
26 or privilege provided by law because of such
27 individual's refusal to disclose his social
28 security account number.

29 16. The actions of Stops and the policies and procedures of
30 CCSN's Admissions and Records Department violate the provisions
31 of 5 USC § 552a.

32 17. Durante and the members of the Class are entitled to a
33 permanent injunction prohibiting Stops from administering the
34

1 CCSN Office of Admissions and Records in such a manner that
2 Durante and other members of the Class and future CCSN student
3 applicants are requested to disclose their Social Security
4 account numbers without being first notified whether the
5 disclosure is mandatory or voluntary, by what statutory or other
6 authority such number is solicited, and what uses will be made of
7 it.

8 18. Durante and the members of the Class are entitled to a
9 permanent injunction prohibiting Stops from administering the
10 CCSN Office of Admissions and Records so as to require Durante
11 and other members of the Class from needing to provide their
12 Social Security account number in order to use the CCSN telephone
13 and WEB registration system to enroll in classes, drop classes or
14 find out their grades.

15 19. Durante is entitled to an award of costs and attorney's
16 fees pursuant to 5 USC § 552a.

17 **Second Cause of Action**
18 (42 USC § 1983)

19 20. Stops under color of law has subjected Durante to the
20 deprivation of rights secured by the laws of the United States of
21 America causing her damages as described herein for which Stops
22 is liable pursuant to 42 USC § 1983.

23 21. Durante and the members of the Class are entitled to an
24 injunction as described in paragraphs 17 and 18 herein pursuant
25 to 42 USC § 1983.

26 22. Durante is entitled to costs and attorney's fees
27 pursuant to 42 USC § 1988.
28 . . .

1 23. Stops acted pursuant to Nevada and CCSN policy in
2 violating the federal statutory rights of Durante and the members
3 of the Class and, therefore, Nevada is jointly and severally
4 liable with Stops for the damages, injunctive relief, costs and
5 attorney's fees requested herein pursuant to 42 USC § 1983 and
6 42 USC § 1988.

7 **Third Cause of Action**

8 24. Stops negligently violated 5 USC § 552a proximately
9 causing Durante damages as described herein.

10 25. Stops acted outside the scope of his employment with
11 State and/or acted wantonly or, alternatively, Stops acted within
12 the scope of his employment with State and did not act wantonly,
13 or any combination thereof, as may be determined by a jury at
14 time of trial pursuant to NRS 41.03475 and 41.0348.

15 26. If Stops was acting within the scope of his employment
16 with State and was not acting wantonly, then State is jointly and
17 severally liable for the damages caused Durante by the negligent
18 actions or inactions of Stops under the doctrine of respondeat
19 superior and pursuant to Chapter 41 of the Nevada Revised
20 Statutes.

21 **Prayer for relief**

22 27. **Wherefore**, Plaintiff Durante and all other members of
23 the Class pray this Honorable Court grant them judgment against
24 Defendants as follows:

25 28. A declaration that Stops' administration of the CCSN
26 Office of Admissions and Records violates 5 USC § 552a.
27 . . .
28 . . .

1 29. A permanent injunction requiring Stops administer the
2 CCSN Office of Admissions and Records in conformance with the
3 following guidelines:

4 A. That any person being requested to provide their Social
5 Security account number to CCSN be notified whether such
6 disclosure is mandatory or voluntary, by what statutory or other
7 authority such number is solicited, and what uses will be made of
8 it.

9 B. That any person not providing their Social Security
10 account number to CCSN or who has removed it from their CCSN
11 records not be denied any right, benefit, or privilege provided
12 by law to other CCSN students who provided their Social Security
13 account number to CCSN, including, but not limited to, the
14 ability to access the CCSN telephone and WEB registration systems
15 to enroll in classes, drop classes or find out their grades,
16 either by assigning such students a separate password or by some
17 other method.

18 30. General damages to Durante in an amount in excess of
19 \$1,000.00.

20 31. Prejudgment interest at the legal rate from the time of
21 the service of this Complaint upon the Defendants.

22 32. Costs of suit.

23 33. Reasonable attorney's fees.

24 34. Post judgment interest at the legal rate from the time
25 of judgment.

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35. For such other and further relief as this Honorable Court deems just, equitable and proper under the circumstances.

Dated this 29th day of February, 2000.

KOSSACK LAW OFFICES

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Attorney for Plaintiff,
Durante and the Class

VERIFICATION

12 STATE OF NEVADA)) ss.
13 COUNTY OF CLARK)

I, NATALIE DURANTE, being first duly sworn, depose and say:

15 I am a Plaintiff in the above-entitled action; I have read
16 the foregoing Complaint and know the contents thereof; the same
17 is true of my knowledge except as to those matters therein stated
18 on information and belief and, as to those matters, I believe
19 them to be true.

Natalie Durante
NATALIE DURANTE

22 SUBSCRIBED and SWORN to before
me this 9th day of February, 2000.

NOTARY PUBLIC in and for said
County and State

